other. *Francis v. Corleto*, 418 Pa. 417, 211 A.2d 503 (1965) citing *Pleasant Hills Borough v. Carroll*, 182 Pa. Super. 102, 125 A.2d 466 (1956).

In *Francis v. Corleto* plaintiffs claimed compensation for a period of time when they were actively working to the detriment of their public employer. Their claim was based on civil service regulations that declared terminal vacation pay *shall* be paid, arguing that the language imposed on the defendant a legal obligation to make such a payment. The Court said:

> Under the circumstances here presented, we will not construe the word in this mandatory sense, thereby taking from the City its right to recoup at least some of its losses incurred by reason of the plaintiffs' misconduct in office.

As we view Rule 51A(1) (a) the officer is permitted, or may, issue a citation because he is in uniform. The immediate issuance of a citation expedites the proceedings and cuts through the steps that marked summary violation prosecutions before these rules. Under the Vehicle Code, the Act of 1929, May 1, P. L. 905, Sec.1202; 1931, June 211, P.L. 751, Sec.2; 1937, June 29, P.L. 2329, Sec.3, summary proceedings were commenced when the officer filed an information with the Justice of the Peace who, within seven days, had to send the defendant a notice in writing of the filing of the information, with a copy of the information and notice to appear within ten days. The procedure was obviously a cumbersome one.

We conclude that Rule 51A(1) (a) and (b) were adopted for the convenience of the Commonwealth and not to protect any right of the defendant. When an officer is in uniform his authority as an officer and right to issue a citation is clear and so it is permissible. But not if he is not in uniform. Then he must go to a Justice of the Peace and file the citation with proceedings markedly similar to those under the Vehicle Code of 1929 to follow. But again, for the convenience of the Commonwealth, if the officer is in uniform but must hurry along to something else, such as to investigate an accident, *Commonwealth v. Xakellis* 73 D&C 2d 207 (1976) or interview another witness, *Commonwealth v. Lombardo*, 4 D&C 3 106 (1977) the officer may proceed through the Justice of the Peace.

In the context of Rule 51, *shall* cannot be construed as mandatory and thus deprive the Commonwealth of the right to prosecute a summary motor violation.

Now to the District Attorney's point, that to impose a sanction by dismissing the case is beyond the purview of this

This is what we have done. The motions to strike duplicate the demurrers, leaving only the motion for more specific pleading. We will not require more specific pleading, so the case may proceed. We are obliged, however, to grant the defendant time in which to file an answer.

ORDER OF COURT

September 11, 1980, the Defendants' Demurrers to Counts Three and Four are treated as Motions for Judgment on the Pleadings and are granted. The other Motion for More Specific Pleading is denied. The Defendants are given twenty days from this date to file a responsive pleading to Counts One and Two of the Complaint if Defendants deem to appropriate to do so.

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[1] Counts one and two contain such an allegation.

COMMONWEALTH v. CHATMAN, C.P. Franklin County Branch, No. 272 of 1980

Criminal - Driving at Unsafe Speed - Pa. R. Crim. P. 51

1. In Pa. R. Crim. P. 51A(1) (a), the use of the word "shall" in referring to the issuance of a citation at the scene of a violation for a summary offense is interpreted to be directory and not mandatory.

2. Pa. R. Crim. P. 51A(1) (a) and (b) were adopted for the convenience of the Commonwealth to avoid filing an information with a District Justice. It was not intended to protect any right of the defendant.

3. It is beyond the purview of the Court of Common Pleas to impose the sanction of dismissing the case for failure to issue a citation at the scene of a violation.

4. Where a State Trooper stopped an unmarked State Police car driven by an off duty corporal in uniform, it was not feasible for the arresting officer to immediately issue a citation to the defendant in that the defendant was the arresting officer's superior, driving a state police car, who may or may not have been on duty.

John F. Nelson, Assistant District Attorney, Attorney for the Commonwealth

Larry E. Stoner, Esq., Attorney for Defendant

OPINION AND DECISION

EPPINGER, P.J., September 19, 1980:

The defendant is a State Police Corporal. He was charged by another Trooper with driving too fast for conditions, an alleged violation of the Vehicle Code, The Act of 1976, June 17, P.L. 162 No. 81, Sec.3361, 75 Pa.C.S.A. 3361, Driving at an Unsafe Speed.

We must dispose of what seems to be a motion to dismiss the case for procedural irregularity. The two Troopers who saw a car pass swiftly at an intersection in Greenvillage along U.S. Route 11 pursued it chasing at speeds between 90 and 110 miles per hour. They must have been startled, when after activating the flashing light they saw that the car was an unmarked State Police car driven by a State Police Corporal, in uniform, apparently off duty.

At this time the Trooper who brought the charges and was in uniform did not issue a citation to the Corporal, though driving too fast for conditions is a summary offense. The Corporal complains that Pa.R.Crim.P. 51 was not complied with [1] and therefore the prosecution must be dismissed. This is not a required or acceptable result since we find defendant was driving too fast for conditions.

Reaching this conclusion, we reluctantly disagree with the court in *Commonwealth v. Ribson*, 70 D&C 2d 348 (1975). In that case, prompted by what he considered to be the mandate in *Commonwealth v. Campana*, 452 Pa. 223, 304 A.2d 432 (1973), a Trooper refrained from handing the defendant two summary violation citations after a check with his station showed that the defendant was driving under suspension. When this was verified in writing, the Trooper filed all three citations with a Justice of the Peace. The defendant appeared before the issuing authority and was convicted of all three offenses and appealed. He argued, as defendant argues here, that the failure of the officer to issue the citation should result in a dismissal of the charge. The court held that the provisions of Rule 51 are mandatory and that the sanction is to dismiss the charge. To the same effect are other decisions in the Cumberland County Court. *Commonwealth v. LeFevre*, 25 Cumb. L.J. 166 (1975), *Commonwealth v. Lightman*, 26 Cumb. L.J. 292 (1976).

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1. Pa.R.Crim.P. 51A(1) (a) says a citation shall be issued to the defendant by a police officer who is in uniform when the charge is a summary offense. (1) (b) directs a citation to be filed with the issuing authority in summary cases when the officer is not in uniform or when it is not feasible to issue a citation to the defendant. The issuing authority then issues a summons, not a warrant or arrest, except under certain conditions.

court. We agree. In *Commonwealth v. DeCosey*, 246 Pa. Super. 412, 371 A.2d 905 (1977), the court refused to dismiss a proceeding against a defendant even though his preliminary hearing was not held within three to ten days from the date of arraignment and no extension had been granted, all in violation of Pa.R.Crim.P. 140(f) (1). The majority said, though the rule states preliminary hearings shall be held as prescribed in the rule, since there is neither federal nor state requirement for a preliminary hearing, it could not conclude the language required an automatic dismissal if the rule is violated. And since the defendant showed no prejudice, the case would not be quashed. In the concurring opinion Judge Spaeth discusses the right of a court other than the Supreme Court to impose a sanction.

Then in *Commonwealth v. Jones*, 245 Pa. Super. 487, 369 A.2d 733 (1977) where there was a violation of Pa.R.Crim.P. 2009(a) saying that an inventory of seized property shall be made and shall be verified by the law enforcement officer who seized it, Judge Spaeth, speaking for the court reversed an order of the lower court suppressing the evidence even though the inventory was not verified, holding it had no right to impose a sanction, that such power rests with the Supreme Court.

> "This is so because, unlike the Supreme Court, neither this court (Superior Court) nor the lower court has any general supervisory or rule making power on the basis of which an order directing the suppression of evidence may be entered." *Id.* 245 Pa. Super. at 493.

Finally, we conclude that even if our interpretations of Rule 51 are erroneous, under the circumstances outlined by the arresting officer, it was not feasible for him to issue a citation to the defendant. He was confronted by his superior, driving a state police car, who may or may not have been on duty. If the corporal had the right to be doing what he was doing, far better for the officer to determine the exact status or conform to department policy, than to issue a citation and then have to withdraw it.

DECISION

September 19, 1980, the motion to dismiss the case for procedural irregularity is dismissed and the defendant, Bernard L. Chatman is found guilty of driving too fast for conditions, a violation of the Vehicle Code, the Act of 1976, June 17, P.L. 162, No. 81, Sec.3361, 75 Pa.C.S.A. Sec.3361.

The defendant shall appear for sentencing at the call of the District Attorney.